IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 26038 of 2005(Y)

EP.55/2003 of DISTRICT COURT, KASARAGOD
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PETITIONERS:
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1. A.J.JOY, S/O.JOSEPH, MOTOR OPERATOR,
   ANIMOOTTIL HOUSE, KALLAR, HOSDURG,
   KASARAGOD DISTRICT.

2. BINOY.O.J., S/O.JOHN O.C.,
   OZHUNGALIL HOUSE, KALLAR, HOSDURG,
   KASARAGOD DISTRICT.

BY ADV. SRI.K.G.CLEETUS

RESPONDENTS:
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1. M/S.MAHARASHTRA APEX CORPORATION LTD.,
   MANIPAL, UDUPI DISTRICT, KARNATAKA
   REPRESENTED BY ITS GENERAL POWER ATTORNEY
   HOLDER K.GOPALAKRISHNA BHAT.

2. A.J.SHAJI JOSEPH, S/O.JOSEPH,
   MOTOR OPERATOR, ANIMOOTTIL HOUSE KALLAR,
   HOSDURG, KASARAGOD.

BY ADV. SRI.S.R.DAYANANDA PRABHU
SRI.K.S.RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE PROCEEDINGS CONCLUDED AS PER AWARD AP NO.304/2000 DT.24.3.01.

EXT.P2 : TRUE COPY OF THE EP NO.55/03 FILED BY THE 1ST REPSONDENT BEFORE THE DISTRICT JUDGE, KASARGODE DT. NIL.

EXT.P3 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONERS DT.30.03.04.

EXT.P4(I) : TRUE COPY OF THE VOUCHER NO.443051 DT.31.10.2000.

EXT.P4(II) : TRUE COPY OF THE VOUCHER NO.407229 DT.31.5.01.

EXT.P4(III) : TRUE COPY OF THE VOUCHER NO.407230 DT.31.5.01.

EXT.P5 : TRUE COPY OF THE PROCLAMATION OF SALE OF IMMOVABLE PROPERTY ISSUED BY THE DISTRICT COURT, KASARGODE IN EP NO.55/03.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 26038 OF 2005

Dated this the 22nd day of June, 2007

JUDGMENT

Heard both sides. Mr.Jose J. Matheikel, learned counsel for the petitioner submits that the execution court has not passed any orders considering the serious objections which were raised to the execution petition through Ext.P3 counter. Mr.S.R.D.Prabhu, counsel for the respondent points out that the petitioner has not complied with the condition imposed by this Court that a sum of Rs.2 lakhs shall be deposited, even within the extended time and such a party is not entitled for favouable exercise of discretion by this court.

Having considered the rival submissions addressed at the Bar, I am of the view that the petitioner is not justified in not complying with the directions imposed by this Court that a sum of Rs.2 lakhs shall be deposited. I enlarge the time for making the above deposit of Rs.2 lakhs till 31.07.2007. The petitioner will either deposit the amount before the court below or will pay the amount to the decree holder,1st respondent and produce memo before the court below. The court below will verify on 01.08.07 or on the next posting date as to whether the petitioner has made the payment/deposit. If it is seen that the deposit or payment has been made by the petitioner, the court below will hear the parties on the

various contentions which have been raised by the petitioners in Ext.P2 and pass appropriate orders. Considering the above directions, the sale which is proposed as per Ext.P5, at any rate, will not be conducted till 15.08.2007.

PIUS C. KURIAKOSE, JUDGE

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